

**IN THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF WEST VIRGINIA
WHEELING DIVISION**

MARK MCEVOY, et al., individually and
on behalf of a proposed class,

Plaintiffs,

v.

Civil Action No. 5:22-cv-171
The Honorable John P. Bailey

DIVERSIFIED ENERGY COMPANY PLC,
et al.,

Defendants.

**PLAINTIFFS' MOTION TO QUASH OR,
IN THE ALTERNATIVE, FOR PROTECTIVE ORDER
REGARDING THE SUBPEONAS SERVED ON
LUKE PLANTS AND PLANTS AND GOODWIN, INC.**

Pursuant to Rule 45(d)(3) of the Federal Rules of Civil Procedure, Plaintiffs hereby timely move to quash, or, in the alternative for a protective order regarding the subpoenas issued to Plaintiffs' retained expert Luke Plants (ECF No. 216) and to Plants and Goodwin, Inc. (ECF No. 215), the company of which Mr. Plants is Chief Operating Officer.

Defendants are aware that Plaintiffs have retained Mr. Plants as an expert in anticipation of this litigation. *See* ECF No. 218. Defendants' Rule 45 subpoenas constitute an impermissible end-run around Rule 26's limitations on discovery of a party's retained expert in both scope and timing. Defendants' subpoenas are premature because they come more than four months prior to the September 1, 2023 deadline for disclosure of experts established in the Court's Scheduling Order. ECF No. 70 at 2. And Defendants' subpoenas are overbroad because they seek information that is explicitly protected from disclosure by Rule 26(b).

Accordingly, Plaintiffs request that the Court issue an order quashing the subpoenas served on Mr. Plants (ECF No. 216) and Plants and Goodwin, Inc. (ECF No. 215) as seeking

improper expert discovery in violation of Rule 26, or in the alternative, issue a protective order making clear that discovery from Plaintiffs' expert Luke Plants directly or by way of his company is limited by Rule 26 and the Court's Scheduling Order, such that no response to the subpoenas is required.

Dated: May 2, 2023

Respectfully submitted,

/s/ Benjamin A. Luckett

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CERTIFICATE OF SERVICE

I, Benjamin A. Lockett, hereby certify that on May 2, 2023, I caused to be filed the foregoing with the Clerk of the Court using the CM/ECF System, which caused a true and accurate copy of such filing to be served upon all attorneys of record.

/s/ Benjamin A. Lockett
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